

Code of Virginia

§ 59.1-538. Short title.

This chapter shall be known and may be cited as the "Enterprise Zone Grant Act."

(2005, cc. 863, 884.)

§ 59.1-539. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Housing and Community Development.

"Department" means the Department of Housing and Community Development.

"Enterprise zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Local zone administrator" means the chief executive of the county or city in which the enterprise zone is located, or his designee.

(2005, cc. 863, 884.)

§ 59.1-540. Administration.

The Department shall administer this chapter and shall have the following powers and duties:

1. To establish the criteria for determining what areas qualify as enterprise zones. Such criteria shall include, but not be limited to, the distress criteria specified in § 59.1-545;
2. To monitor the implementation and operation of this chapter;
3. To evaluate and report on the Enterprise Zone Program;
4. To administer, enforce, and interpret the regulations promulgated by the Board; and
5. To allocate grant funds in accordance with the provisions of this chapter.

(2005, cc. 863, 884.)

§ 59.1-541. Rules and regulations.

Rules and regulations prescribing procedures implementing the purpose of this chapter shall be promulgated by the Board in accordance with the Administrative Process Act.

(2005, cc. 863, 884.)

§ 59.1-542. Enterprise zone designation.

A. Upon the Department's announcement of periodic zone designation competitions, the governing body of any county or city may make written application to the Department to have an area or areas declared an enterprise zone. Such application shall include a description of the area or areas to be included, the development potential of these areas, the need for special state incentives, the local incentives that shall be provided to support new economic activity, and other information that the Department deems necessary to assess requests for designation.

B. Two or more adjacent localities may file a joint application for an enterprise zone. Localities applying for a joint zone shall demonstrate a regional need for an enterprise zone and a regional impact that could not be achieved through a single jurisdiction zone. Applicants for a joint zone shall also specify what mechanisms will be used to ensure that the economic benefits of such a zone are shared among the applicant localities.

C. An enterprise zone may consist of no more than three noncontiguous areas. The aggregate size of these noncontiguous zone areas

shall be specified by regulation. Localities shall be limited to three enterprise zone designations.

D. A joint enterprise zone shall consist of no more than three noncontiguous zone areas for each participating locality. The aggregate size of these noncontiguous areas shall be specified by regulation.

E. Upon recommendation of the Director of the Department, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this chapter. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions. The initial round of six zone designation applications and approval may be conducted prior to adoption of final program regulations provided that the process is consistent with the provisions of this chapter. Enterprise zones shall be designated for an initial 10-year period except as provided for in subsections A and B of § 59.1-546. Upon recommendation of the Director of the Department, the Governor may renew zones for up to two five-year renewal periods. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment.

F. Localities that have zone designations are responsible for providing the local incentives specified in their applications, providing timely submission of enterprise zone reports and evaluations as required by regulation, verifying that businesses and properties seeking enterprise zone incentives are physically located within their zones, and implementing an active local enterprise zone program within the context of overall economic development efforts.

(2005, cc. 863, 884.)

§ 59.1-543. Local incentives.

A. Local governments submitting applications for enterprise zone designation shall propose local incentives that address the economic conditions within their locality and that will help stimulate real property improvements and new job creation. Such local incentives include, but are not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of business, professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221; and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1. The extent and duration of such incentives shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as an enterprise zone, the application may also contain proposals for regulatory flexibility, including but not limited to: (a) special zoning districts, (b) permit process reform, (c) exemptions from local ordinances, and (d) other public incentives proposed in the locality's application which shall be binding upon the locality upon designation of the enterprise zone.

B. A locality may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

(2005, cc. 863, 884.)

§ 59.1-544. Amendment of enterprise zones; redesignation of certain joint enterprise zones.

A. Once an enterprise zone has been designated, the local government may make written application to the Department to amend the zone boundaries in accordance with the requirements of § 59.1-542. Such boundary amendments are subject to Department approval. Local governing bodies may amend their local enterprise zone incentives with the approval of the Department provided that the proposed incentive is equal to or superior to that in the original application or any previous amendment approved by the Department.

B. The Department may redesignate an existing joint enterprise zone consisting of two localities for the purpose of expanding the zone provided (i) all of the local governing bodies of the localities in which the proposed redesignated zone will be located have submitted to the Department resolutions supporting the proposed redesignation and applications for redesignation of the joint enterprise zone and (ii) the area of the locality added to the redesignated zone is contiguous to the existing joint enterprise zone and includes a revenue-sharing district that has experienced the loss of 900 permanent full-time positions within a 12-month period.

As used in this subsection, "joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

Any redesignation of an existing joint enterprise zone shall be in compliance with all applicable regulations promulgated by the

Department.

(2005, cc. 863, 884; 2011, cc. 254, 310.)

§ 59.1-545. Application review.

A. After announcement of a periodic zone designation application process, the Department shall review each application upon receipt and secure any additional information that it deems necessary for the purpose of evaluating the need and potential impact of a zone designation.

B. The Department shall complete review of the applications within 60 days of the last date designated for receipt of an application. After review of the applications the Director of the Department shall recommend to the Governor those applications with the greatest potential for accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact, along with the reasons for the denial.

C. Consideration for enterprise zone designations shall be based upon the locality-wide need and impact of such a designation. Need shall be assessed in part by the following distress factors: (i) the average unemployment rate for the locality over the most recent three-year period, (ii) the average median adjusted gross income for the locality over the most recent three-year period, and (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period. These distress factors shall account for at least 50 percent of the consideration given to local governments' applications for enterprise zone designation.

(2005, cc. 863, 884.)

§ 59.1-546. Review and termination of enterprise zones.

A. If the local governing body is unable or unwilling to provide the specified local incentives as proposed in its application for zone designation or as approved by the Department in an amendment, the zone designation shall terminate. Qualified business firms located in such enterprise zone shall be eligible to receive the incentives provided by this chapter even though the zone designation has terminated. No business firm may become a qualified business firm after the date of zone termination.

B. If no business firms have qualified for incentives as provided for in this chapter within a five-year period, the Department shall terminate that enterprise zone designation.

C. The Department shall review the effectiveness in creating jobs and capital investment and activity occurring within designated enterprise zones and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Appropriations Committee, and the House Committee on Commerce and Labor.

(2005, cc. 863, 884.)

§ 59.1-547. Enterprise zone job creation grants.

A. As used in this section:

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis. For those permanent full-time employees filling permanent full-time, salaried positions, the minimum wage is defined as the employee's annual salary divided by 52 weeks per year divided by 35 hours per week.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the job creation grant amount. A full month is calculated by dividing the total number of days in the calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm.

Positions in retail, personal service or food and beverage service shall not be considered grant eligible positions.

"Permanent full-time position" means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (i) seasonal, temporary or contract positions, (ii) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone, (iii) any position that previously existed in the Commonwealth, or (iv) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § 59.1-542.

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Subsequent base year" means the base year for calculating the number of grant eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

B. A business firm shall be eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility. A business firm may be eligible for subsequent five consecutive calendar year grant periods if it creates new grant eligible positions above the threshold for its subsequent base year.

C. The amount of the grant for which a business firm is eligible shall be calculated as follows:

1. Either (i) \$800 per year for up to five consecutive years for each grant eligible position that during such year is paid a minimum of 200 percent of the federal minimum wage and that is provided with health benefits, or (ii) \$500 per year for up to five years for each grant eligible position that during such year is paid less than 200 percent of the federal minimum wage, but at least 175 percent of the federal minimum wage, and that is provided with health benefits. In areas with an unemployment rate that is one and one-half times or more the state average, the business firm will receive \$500 per year for up to five years for each grant eligible position that during such year is paid at least 150 percent of the federal minimum wage and that is provided with health benefits. Unemployment rates used to determine eligibility for the reduced wage rate threshold shall be based on the most recent annualized unemployment data published by the Virginia Employment Commission. A business firm may receive grants for up to a maximum of 350 grant eligible jobs annually.

2. Positions paying less than 175 percent of the federal minimum wage or that are not provided with health benefits shall not be eligible for enterprise zone job creation grants.

D. Job creation grants shall be based on a calendar year. The amount of the grant for which a qualified business firm is eligible with respect to any permanent full-time position that is filled for less than a full calendar year shall be prorated based on the number of full months worked.

E. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

F. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

G. Any qualified business firm receiving a major business facility job tax credit pursuant to § 58.1-439 shall not be eligible to receive an enterprise zone job creation grant under this section for any job used to qualify for the major business facility job tax credit.

(2005, cc. 863, 884; 2006, c. 668; 2010, c. 328; 2012, c. 445.)

§ 59.1-548. Enterprise zone real property investment grants.

A. As used in this section:

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction as well as to the rehabilitation and expansion of existing structures.

"Mixed use" means a building incorporating residential uses in which a minimum of 30 percent of the useable floor space will be devoted to commercial, office or industrial use.

"Qualified real property investment" means the amount properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) \$100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) \$500,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.
2. Other costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
3. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iv) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014 (a).

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements.

B. Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of \$500,000 in the

case of the construction of a new building or facility. Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of \$100,000 in the case of the rehabilitation or expansion of an existing building or facility. For any qualified zone investor making \$5 million or less in qualified real property investment, a real property investment grant shall not exceed \$100,000 within any five-year period for any individual building or facility. For any qualified zone investor making more than \$5 million in qualified real property investment, a real property investment grant shall not exceed \$200,000 within any five-year period for any individual building or facility.

C. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service.

(2005, cc. 863, 884; 2007, cc. 242, 287; 2009, cc. 207, 271.)

§ 59.1-549. Policies and procedures for allocation of enterprise zone incentive grants.

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone incentive grants provided for in this chapter to the extent that they apply for and are approved for grant allocations through the Department.

B. If the sum of (i) the total amount of grants for which qualified business firms are eligible under § 59.1-547 plus (ii) the total amount of grants for which qualified zone investors are eligible under § 59.1-548 exceeds the total annual appropriation for the payment of all grants under this chapter for the relevant year, then the amount of the grant that each qualified business firm and qualified zone investor is eligible for shall be prorated in a proportional manner. The Department shall prioritize allocations to fully fund the grants under § 59.1-547 with any remaining funds to be allocated to grants under § 59.1-548. In such cases, the amount of the grant that each qualified zone investor is eligible for under § 59.1-548 shall be prorated in a proportional manner based on the funds remaining in the annual appropriation after full payment of the grants under § 59.1-547.

C. Qualified zone businesses and qualified zone investors shall make application to the Department each year for which they seek eligibility for enterprise zone incentive grants. Such application is to be in accordance with regulations promulgated by the Board on forms supplied by the Department and in accordance with dates specified by the Department.

D. The accuracy and validity of information on qualified real property investments, permanent full-time positions, wage rates and provision of health benefits provided in such applications are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the Department. Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for Job Creation Grants as provided for in § 59.1-547 shall be exempt from the attestation requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the Department.

E. Applicants for enterprise zone incentive grants under this chapter must have the local zone administrator verify that the location of their business or property is in the enterprise zone using a form supplied by the Department. The local zone administrator shall make this verification in accordance with dates specified by the Department.

F. The Department may at any time review qualified zone businesses and qualified zone investors to assure that information provided in the application process is accurate.

G. Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

H. Enterprise zone incentive grants that do not have adequate documentation regarding qualified real property investments, permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business or qualified zone investor.

I. Actions of the Department relating to the approval or denial of applications for enterprise zone incentive grants under this chapter

shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

(2005, cc. 863, 884; 2009, cc. 207, 271; 2010, c. 328; 2011, cc. 202, 320.)
